

2008

# Nicholas L. Rowe vs. Emily Baird, LDS Family Services, a Utah Corporation : Reply Brief

Utah Court of Appeals

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

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**NICHOLAS L. ROWE, an individual,**

Petitioner/Appellant,

vs.

**EMILY BAIRD, an individual; LDS  
FAMILY SERVICES, a Utah corporation;  
Does 1-10,**

Respondents/Appellees.

**Civil No. 20080424**

**Priority No. 15**

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REPLY BRIEF OF APPELLANT

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Appeal from a Judgment entered in the First Judicial District Court,  
Cache County, State of Utah Honorable Judge Clint S. Judkins Presiding

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## **STATEMENT OF JURISDICTION**

Pursuant to Utah Code Ann. §§78-2-2(3) and 78-2a-3 (1953, as amended) this civil appeal is within the jurisdiction of the Utah Supreme Court and was transferred to the Utah Court of Appeals pursuant to Utah Code Ann. §§78A-3-102 and 78A-4-103, on May 15, 2008.

## **PARTIES**

1. **Nicholas L. Rowe** (“Mr. Rowe”) was, at all times relevant, a resident of Pocatello, Idaho.
2. **Emily Baird** (“Ms. Baird”) was, at all times relevant, a resident of Pocatello and/or Preston, Idaho.
3. **LDS Family Services** (“LDS Family”) was and is a Utah corporation with its principal place of business located at 1880 South Bothwell, Salt Lake City, Salt Lake County, Utah, and is the owner of real property at issue in this case.

## **STATEMENT OF ISSUES ON APPEAL**

1. Whether the trial court erred in determining that summary judgment was appropriate under the facts of this case, which precluded the need for an evidentiary hearing concerning the Appellant’s dedication and his accepting responsibility to his baby daughter.
  - a. A trial court’s grant of summary judgment is reviewed under a correctness standard, granting no deference to the trial court’s legal conclusions. *Coet v. Labrum*, 2008 UT App 69 (March 6, 2008); *Green River Canal Co. v. Thayn*, 2003 UT 50, ¶ 16, 84 P.3d 1134. The review of the facts and all reasonable inferences drawn therefrom must be done in the light most favorable to the nonmoving party. *Coet v. Labrum*, 2008 UT App 69 (March 6, 2008);

*Surety Underwriters v. E & C Trucking, Inc.*, 10 P.3d 338 (Utah 2000). Utah Rules of Civil Procedures 56 (c); *Burns v. Cannondale Bicycle Co.*, 876 P.2d 415 (Utah Ct. App. 1994); *Dairyland Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 882 P.2d 1143 (Utah 1994); *Fericks v. Lucy Ann Soffe Trust*, 100 P.3d 1200 (Utah 2004); *Holmes v. American States Ins. Co.*, 1 P.3d 552 (Utah Ct. App. 2000); *Kessler v. Mortenson*, 16 P.3d 1225, 1226 (Utah 2000); *Lopez v. Union Pac. R.R.*, 932 P.2d 601 (Utah Ct. App. 1997); *Malibu Investment Co. v. Sparks*, 996 P.2d 1043 (2000); *Massey v. Griffiths*, 152 P.3d 312 (Utah Ct. App. 2007); *McKell Excavating, Inc. v. Wells Fargo Bank, N.A.*, 100 P.3d 1159 (Utah 2004); *McNair v. Farris*, 944 P.2d 392 (Utah Ct. App. 1997); *Poteet v. White*, 147 P.3d 439 (Utah 2006); *Price Development Co., L.P. v. Orem City*, 995 P.2d 1237 (Utah 2000); *Surety Underwriters v. E & C Trucking, Inc.*, 10 P.3d 338, 340 (Utah 2000).

2. Whether the trial court erred in determining that the Appellant, who is an Idaho resident, failed to strictly comply with Utah Code Annotated and demonstrate a timely and full commitment to the responsibility of parenthood during Ms. Baird's pregnancy and upon the child's birth.

a. A trial court's determination of the Appellant's lacked of standing to bring a petition for custody of his child, is a question of law. *Albores v. Bracamontes*, 2006 Ut. App. 204 (May 25, 2006); *Pearson v. Pearson*, 2006 Ut. App. 128 (, 2006); *Gutierrez v. Medley*, 972 P.2d 913 (Utah 1998); Utah Code Ann. §78-30-1.1 *et seq.*; *Beltran v. Allan*, 926 P.2d 892 (Utah App. 1996); *Ellis v. Social Services Department*, 615 P.2d 1250, 1256 (Utah 1980); *In re Adoption of B.B.D.*, 984 P.2d 967 (Utah 1999); *Matter of Adoption of W*, 904 P.2d 1113, 1118 (UT App. 1995); *Osborne v. Adoption Center of Choice*, 70 P. 3d 58 (Utah 2003); *Pruitt v.*



*Adoption Center of Choice*, 2005 UT App 160 (Ut. App. 2005); *Sanchez v. L.D.S. Social Services*, 680 P.2d 753 (Utah 1984); *Social Services Dept. of Church of Jesus Christ of Latter-Day Saints*, 615 P.2d 1250 (Utah 1980); *Swayne v. LDS Social Services*, 795 P.2d 637 (Utah 1990); *Wells v. Children's Aid Soc. of Utah*, 681 P.2d 199 (Utah 1984).

### **STATEMENT OF THE CASE**

This case was commenced when Mr. Rowe filed his Verified Petition for Paternity and Contesting Adoption against the Respondents on August 31, 2007. **Record at page 3.** In the Petition, Mr. Rowe asserted four causes of action: 1) for paternity; 2) for fraud and/or intentional misrepresentation; 3) for contesting adoption and 4) for provisions of custody. On or about September 26, 2007, the Respondents filed their Answer. **Record at page 32.** The Respondents filed their Motion for Summary Judgment on or about November 11, 2007. **Record at page 88.** Mr. Rowe filed his Opposition to the Motion for Summary Judgment on or about December 12, 2007. **Record at page 90.** Supporting affidavits accompanied the Memorandum in Opposition to the Motion for Summary Judgment. **Record at pages 187 and 233.** The Respondents filed their Reply Memorandum on or about December 31, 2008. **Record at page 238.** The District Court issued its Memorandum Decision on or about March 17, 2008. **Record at page 255.** The Order dismissing the case was filed by the District Court on or about April 16, 2008. **Record at page 260.** Mr. Rowe now appeals from the District Court's dismissal of Mr. Rowe's Petition to challenge the adoption of the baby girl that was born on March 29, 2007. **Record at page 263.**

## **STATEMENT OF THE FACTS**

The following facts, taken from the lower court's record, are pertinent to the issues raised on appeal:

1. Were presented in Mr. Rowe's initial brief.

## **STATUTE WHOSE DETERMINATION IS DETERMINATIVE**

Utah Code Ann. § 78-30-4.12 (1953)(as amended) provides:

Rights and responsibilities of parties in adoption proceedings.

(1) The Legislature finds that the rights and interests of all parties affected by an adoption proceeding must be considered and balanced in determining what constitutional protections and processes are necessary and appropriate.

(2) The Legislature finds that:

(a) the state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children;

(b) an unmarried mother, faced with the responsibility of making crucial decisions about the future of a newborn child, is entitled to privacy, and has the right to make timely and appropriate decisions regarding her future and the future of the child, and is entitled to assurance regarding the permanence of an adoptive placement;

(c) adoptive children have a right to permanence and stability in adoptive placements;

(d) adoptive parents have a constitutionally protected liberty and privacy interest in retaining custody of an adopted child; and

(e) an unmarried biological father has an inchoate interest that acquires constitutional protection only when he demonstrates a timely and full commitment to the responsibilities of parenthood, both during pregnancy and upon the child's birth. The state has a compelling interest in requiring unmarried biological fathers to demonstrate that commitment by providing appropriate medical care and financial support and by establishing legal paternity, in accordance with the requirements of this chapter.

(3) (a) In enacting Sections 78-30-4.12 through 78-30-4.21, the Legislature prescribes the conditions for determining whether an unmarried biological father's action is sufficiently prompt and substantial to require constitutional protection.

(b) If an unmarried biological father fails to grasp the opportunities to establish a relationship with his child that are available to him, his biological parental interest may be lost entirely, or greatly diminished in constitutional significance by his failure to timely exercise it, or by his failure to strictly comply with the available legal steps to substantiate it.

(c) A certain degree of finality is necessary in order to facilitate the state's compelling interest. The Legislature finds that the interests of the state, the mother, the child, and the adoptive parents described in this section outweigh the interest of an unmarried biological father who does not timely grasp the opportunity to establish and demonstrate a relationship with his child in accordance with the requirements of this chapter.

(d) An unmarried biological father has the primary responsibility to protect his rights.

(e) An unmarried biological father is presumed to know that the child may be adopted without his consent unless he strictly complies with the provisions of this chapter, manifests a prompt and full commitment to his parental responsibilities, and establishes paternity.

(4) The Legislature finds that an unmarried mother has a right of privacy with regard to her pregnancy and adoption plan, and therefore has no legal obligation to disclose the identity of an unmarried biological father prior to or during an adoption proceeding, and has no obligation to volunteer information to the court with respect to the father.

Utah Code Ann. § 78-30-4.14 (1953)(as amended) states:

Necessary consent to adoption or relinquishment for adoption.

(1) Except as provided in Subsection (2), consent to adoption of a child, or relinquishment of a child for adoption, is required from:

(a) the adoptee, if the adoptee is more than 12 years of age, unless the adoptee does not have the mental capacity to consent;

(b) both parents or the surviving parent of an adoptee who was conceived or born within a marriage;

(c) the mother of an adoptee born outside of marriage;

(d) any biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption;

(e) consistent with Subsection (3), any biological parent who has executed and filed a voluntary declaration of paternity with the state registrar of vital statistics within the Department of Health in accordance with Title 78, Chapter 45e, Voluntary Declaration of Paternity Act, prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption;

(f) an unmarried biological father of an adoptee, only if he strictly complies with the requirements of Subsections (4) through (8) and (10); and

(g) the person or agency to whom an adoptee has been relinquished and that is placing the child for adoption.

(2) (a) The consent of a person described in Subsections (1)(b) through (g) is not required if the adoptee is 18 years of age or older.

(b) The consent of a person described in Subsections (1)(b) through (f) is not required if the person's parental rights relating to the adoptee have been terminated.

(3) For purposes of Subsection (1)(e), a voluntary declaration of paternity is considered filed when it is entered into a database that:

- (a) can be accessed by the Department of Health; and
- (b) is designated by the state registrar of vital statistics as the official database for voluntary declarations of paternity.

(4) Except as provided in Subsections (5)(a) and (10), and subject to Subsection (8), with regard to a child who is placed with adoptive parents more than six months after birth, consent of an unmarried biological father is not required unless the unmarried biological father:

- (a) (i) developed a substantial relationship with the child by:
  - (A) visiting the child monthly, unless the unmarried biological father was physically or financially unable to visit the child on a monthly basis; or
  - (B) engaging in regular communication with the child or with the person or authorized agency that has lawful custody of the child;
- (ii) took some measure of responsibility for the child and the child's future; and
- (iii) demonstrated a full commitment to the responsibilities of parenthood by financial support of the child of a fair and reasonable sum in accordance with the father's ability; or

(b) (i) openly lived with the child:

- (A) (I) for a period of at least six months during the one-year period immediately preceding the day on which the child is placed with adoptive parents; or
- (II) if the child is less than one year old, for a period of at least six months during the period of time beginning on the day on which the child is born and ending on the day on which the child is placed with adoptive parents; and
- (B) immediately preceding placement of the child with adoptive parents; and
- (ii) openly held himself out to be the father of the child during the six-month period described in Subsection (4)(b)(i)(A).

(5) (a) If an unmarried biological father was prevented from complying with a requirement of Subsection (4) by the person or authorized agency having lawful custody of the child, the unmarried biological father is not required to comply with that requirement.

(b) The subjective intent of an unmarried biological father, whether expressed or otherwise, that is unsupported by evidence that the requirements in Subsection (4) have been met, shall not preclude a determination that the father failed to meet the requirements of Subsection (4).

(6) Except as provided in Subsection (10), and subject to Subsection (8), with regard to a child who is six months of age or less at the time the child is placed with adoptive parents, consent of an unmarried biological father is not required unless, prior to the time the mother executes her consent for adoption or relinquishes the child for adoption, the unmarried biological father:

- (a) initiates proceedings in a district court of the state of Utah to establish paternity under Title 78, Chapter 45g, Utah Uniform Parentage Act;
- (b) files with the court that is presiding over the paternity proceeding a sworn affidavit:

- (i) stating that he is fully able and willing to have full custody of the child;
  - (ii) setting forth his plans for care of the child; and
  - (iii) agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth;
- (c) consistent with Subsection (7), files notice of the commencement of paternity proceedings, described in Subsection (6)(a), with the state registrar of vital statistics within the Department of Health, in a confidential registry established by the department for that purpose; and
- (d) offered to pay and paid a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his financial ability, unless:
- (i) he did not have actual knowledge of the pregnancy;
  - (ii) he was prevented from paying the expenses by the person or authorized agency having lawful custody of the child; or
  - (iii) the mother refuses to accept the unmarried biological father's offer to pay the expenses described in this Subsection (6)(d).
- (7) The notice described in Subsection (6)(c) is considered filed when it is entered into the registry described in Subsection (6)(c).
- (8) Consent of an unmarried biological father is not required under this section if:
- (a) the court determines, in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act, that the unmarried biological father's rights should be terminated, based on the petition of any interested party; or
  - (b) (i) a declaration of paternity declaring the unmarried biological father to be the father of the child is rescinded under Section 78-45g-306; and
  - (ii) the unmarried biological father fails to comply with Subsection (6) within ten business days after the day that notice of the rescission described in Subsection (8)(b)(i) is mailed by the Office of Vital Records within the Department of Health as provided in Section 78-45g-306.
- (9) Unless the adoptee is conceived or born within a marriage, the petitioner in an adoption proceeding shall, prior to entrance of a final decree of adoption, file with the court a certificate from the state registrar of vital statistics within the Department of Health, stating:
- (a) that a diligent search has been made of the registry of notices from unmarried biological fathers described in Subsection (6)(c); and
  - (b) (i) that no filing has been found pertaining to the father of the child in question; or
  - (ii) if a filing is found, the name of the putative father and the time and date of filing.
- (10) (a) For purposes of this Subsection (10), "qualifying circumstance" means that, at any point during the time period beginning at the conception of the child and ending at the time the mother executed a consent to adoption or relinquishment of the child for adoption:

- (i) the child or the child's mother resided, on a permanent or temporary basis, in the state of Utah;
- (ii) the mother intended to give birth to the child in the state of Utah;
- (iii) the child was born in the state of Utah; or
- (iv) the mother intended to execute a consent to adoption or relinquishment of the child for adoption:
  - (A) in the state of Utah; or
  - (B) under the laws of the state of Utah.
- (b) For purposes of Subsection (10)(c)(i), a court shall consider the totality of the circumstances when determining whether an unmarried biological father has demonstrated a full commitment to his parental responsibilities, including, if applicable:
  - (i) efforts he has taken to discover the location of the child or the child's mother;
  - (ii) whether he has expressed or demonstrated an interest in taking responsibility for the child;
  - (iii) whether, and to what extent, he has developed, or attempted to develop, a relationship with the child;
  - (iv) whether he offered to provide and, if the offer was accepted, did provide, financial support for the child or the child's mother;
  - (v) whether, and to what extent, he has communicated, or attempted to communicate, with the child or the child's mother;
  - (vi) whether he has filed legal proceedings to establish his paternity of, and take responsibility for, the child;
  - (vii) whether he has filed a notice with a public official or agency relating to:
    - (A) his paternity of the child; or
    - (B) legal proceedings to establish his paternity of the child; or
  - (viii) other evidence that demonstrates that he has demonstrated a full commitment to his parental responsibilities.
- (c) Notwithstanding the provisions of Subsections (4) and (6), the consent of an unmarried biological father is required with respect to an adoptee who is under the age of 18 if:
  - (i) (A) the unmarried biological father did not know, and through the exercise of reasonable diligence could not have known, before the time the mother executed a consent to adoption or relinquishment of the child for adoption, that a qualifying circumstance existed;
  - (B) before the mother executed a consent to adoption or relinquishment of the child for adoption, the unmarried biological father fully complied with the requirements to establish parental rights in the child, and to preserve the right to notice of a proceeding in connection with the adoption of the child, imposed by:
    - (I) the last state where the unmarried biological father knew, or through the exercise of reasonable diligence should have known, that the mother resided in before the mother executed the consent to adoption or relinquishment of the child for adoption; or
    - (II) the state where the child was conceived; and
    - (C) the unmarried biological father has demonstrated, based on the totality of the

circumstances, a full commitment to his parental responsibilities, as described in Subsection (10)(b); or

(ii) (A) the unmarried biological father knew, or through the exercise of reasonable diligence should have known, before the time the mother executed a consent to adoption or relinquishment of the child for adoption, that a qualifying circumstance existed; and

(B) the unmarried biological father complied with the requirements of Subsection (4) or (6) before the later of:

(I) 20 days after the day that the unmarried biological father knew, or through the exercise of reasonable diligence should have known, that a qualifying circumstance existed; or

(II) the time that the mother executed a consent to adoption or relinquishment of the child for adoption.

(11) An unmarried biological father who does not fully and strictly comply with the requirements of this section is considered to have waived and surrendered any right in relation to the child, including the right to:

(a) notice of any judicial proceeding in connection with the adoption of the child; and

(b) consent, or refuse to consent, to the adoption of the child.

Utah Code Ann. § 78-30-4.15 (1953)(as amended) provides:

Responsibility of each party for own actions -- Fraud or misrepresentation.

(1) Each parent of a child conceived or born outside of marriage is responsible for his or her own actions and is not excused from strict compliance with the provisions of this chapter based upon any action, statement, or omission of the other parent or third parties.

(2) Any person injured by fraudulent representations or actions in connection with an adoption is entitled to pursue civil or criminal penalties in accordance with existing law. A fraudulent representation is not a defense to strict compliance with the requirements of this chapter, and is not a basis for dismissal of a petition for adoption, vacation of an adoption decree, or an automatic grant of custody to the offended party. Custody determinations shall be based on the best interest of the child, in accordance with the provisions of Section 78-30-4.16.

(3) The Legislature finds no practical way to remove all risk of fraud or misrepresentation in adoption proceedings, and has provided a method for absolute protection of an unmarried biological father's rights by compliance with the provisions of this chapter. In balancing the rights and interests of the state, and of all parties affected by fraud, specifically the child, the adoptive parents, and the unmarried biological father, the Legislature has determined that the unmarried biological father is in the best position to prevent or ameliorate the effects of fraud and that, therefore, the burden of fraud shall be borne by him.

### SUMMARY OF THE ARGUMENTS

Mr. Rowe was and is entitled all reasonable inferences, which can and should be drawn from all of the facts, and are taken in the light most favorable to the nonmoving party, in this case, Mr. Rowe. Mr. Rowe has presented sufficient facts, which were not contested to overcome the Motion for Summary Judgment.

Mr. Rowe did all in his power to determine what he needed to do to protect his parental rights to his young daughter born on March 29, 2007. Ms. Baird tried to keep the date and location of the birth of the child a secret, even after the birth. He tried to work with LDS Family Services in Idaho, LDS Family Services in Utah, and Idaho State Health and Welfare Office in Pocatello, Idaho. Each and everyone of these individuals and entities made efforts to keep specific information from Mr. Rowe in order to allow that the adoption of Mr. Rowe's daughter would proceed uncontested. Each substituted its or their judgment as to what was in the best interest of his daughter rather than allow Mr. Rowe to take the parental responsibilities and duties, both for her physical and her financial well being. Mr. Rowe made plans and took action to secure his daughters financial future by gaining employment with the highest possible return or pay. This included his selling security systems in Indiana. Further, Mr. Rowe has the support of his whole family in his efforts to gain custody of his daughter and raise her. **Record at page 234, Ron Rowe's Affidavit at ¶¶ 8-9.**

Despite his efforts to protect his parental rights by contacting attorneys in Idaho, as well as the other entities identified in the previous paragraph, he was not able to meet the requirements of the Utah or Idaho statutes due to no fault of his own. He sought help from all of the parties involved with his daughter and those who had custody of her. LDS Family Services,



in Idaho, and Utah, failed and/or refused to disclose to him the need to file with the State of Utah to protect his rights. Even though Mr. Rowe met personally with LDS Family Services, in Pocatello, Idaho, in Logan and in Salt Lake City, Utah. He spoke to the highest authority in LDS Family Services, in Utah, but was still kept in the dark as to the requirements of the statutes and the paperwork necessary to be filed with the State of Utah.

The Utah statutory scheme is allegedly drafted to protect certain State interests and to see that adoptions move forward quickly for the benefit of the child. Nevertheless, the Utah statutory scheme should not allow an adoption agency to affirmatively commit fraud on any person. Adoptions accomplished by fraud of the agency simply should not be tolerated and sanctioned by the State of Utah.

When all of the circumstances are taken as a whole in this case, Mr. Rowe should be allowed to proceed with objecting to the adoption of his daughter. Unlike many unwed fathers, Mr. Rowe asserted all along that he wanted to be involved with his child. The very agency that facilitated the adoption of Mr. Rowe's daughter, was the same agency that had personal contact with Mr. Rowe in its office in three locations in two states. At no time did anyone at any of those locations provide Mr. Rowe with any information about protecting his parental right, despite the fact that is exactly why he went to LDS Family Services in those locations. Mr Rowe had contact before and after the child was born in Utah.

## ARGUMENT

Mr. Rowe was told by LDS Family Services in Idaho (“LDS Family Idaho”), Ms. Baird, her mother, Barbara Baird (“Mrs. Baird”) and grandfather, Neils Nelson (“Mr. Nelson”), and her LDS bishop, Bishop Blaine Rounds (“Bishop Rounds”), that he would be notified when the baby was born. This did not happen and it was a concerted effort by all to conceal the date and location of the baby’s birth. **Record at page 188, Affidavit of Nicholas L. Rowe at ¶ 12 and page 189 at ¶ 24.** Mr. Rowe offered Ms. Baird money for her pregnancy at the January meeting with Mr. Rowe, his dad, Ron Rowe, Mr. Rowe’s LDS bishop, Bishop David Bickley (“Bishop Bickley”), Ms. Baird’s LDS bishop, Bishop Rounds, Ms. Baird’s grandfather, Mr. Nelson, and Ms. Baird’s mother, Mrs. Baird. **Record at page 234, Ron Rowe’s Affidavit at ¶ 10.** From Mr. Rowe’s first contact with LDS Family in Idaho, and later in Utah, Mr. Rowe asserted that he wanted to take financial as well as physical responsibility for the child he and Ms. Baird had created. I believed that my baby would be born in Preston or Pocatello, Idaho, and that by Mr. Rowe signing up with LDS Family in Pocatello, Idaho, on or about February 16, 2007, would protect his parental rights as the child’s father. **Record at page 190, Affidavit of Nicholas L. Rowe at ¶ 33.** He asked for assistance in securing his parental rights. He was not told that he needed to file any documents with any registry to preserve his rights. The attorneys he contacted in Idaho, did not inform him that to protect his parental rights, that he was required to file with a father registry in Idaho.

At no time during Ms. Baird’s pregnancy did she discuss with Mr. Rowe that she intended to travel to Utah to give birth the baby. **Record at page 202, Affidavit of Nicholas L. Rowe at ¶ 118.** She did not discuss with Mr. Rowe that she intended to place the child up for

adoption in Utah at any time. Mr. Rowe tried to establish Paternity in Idaho, but was denied because Ms. Baird claimed someone else as the father. **Record at page 202, Affidavit of Nicholas L. Rowe at ¶ 119.** He was not even aware that his daughter had been born in Utah, for more than two weeks after her birth. Ms. Baird relinquished the child for adoption shortly after the baby girl was born on March 29, 2007, and several weeks before she executed a consent to adoption with LDS on or about April 22, 2007. Mr. Rowe was never allowed to see his child or have any contact with her at all, despite all of his efforts over the course of the pregnancy and after his daughter's birth.

April 20th 2007, Ron Rowe and his wife went with Mr. Rowe to the Idaho State Health and Welfare Office ("ISH&W") in Pocatello, Idaho. **Record at page 235, Ron Rowe's Affidavit at ¶ 23.** Mr. Rowe went to the ISH&W for assistance and protection of his parental rights. He was told that he had to fill-out an application and pay a fee in order to become a client, which would help him find out if he was the father and/or claim paternity. Mr. Rowe completed the application and paid the fee. **Record at page 197-98, Affidavit of Nicholas L. Rowe at ¶ 89.** Six days later, the ISH&W issued Mr. Rowe a check refunding his money and returned my application for paternity, because Ms. Baird was also a client of ISH&W and had listed another individual as the father of the child. Mr. Rowe was also told that paternity would have to be established for the person named as the father in that case before ISH&W could help him pursue his paternity request. **Record at page 198-99, Affidavit of Nicholas L. Rowe at ¶ 93.** ISH&W failed to disclose to Mr. Rowe that there was a requirement in Idaho and/or Utah, for him to file with a registry in order to preserve his parental rights to his daughter.

On May 5, 2007, Saturday, Mr. Rowe, his mother and father, and Bishop Bickley drove to Logan Utah, to meet with a gentleman named Rick Hill (“Mr. Hill”), Director of LDS Family in Logan, Utah. **Record at page 199, Affidavit of Nicholas L. Rowe at ¶ 97.** Mr. Rowe told Mr. Hill that he would be financially responsible for not only the pregnancy and genetic test, but also take financial responsibility for my child if the test confirmed he was the child’s father. **Record at page 199, Affidavit of Nicholas L. Rowe at ¶ 98.** Mr. Hill told Mr. Rowe that he would meet with his staff on the following Monday morning to make arrangements for the test, but in the meanwhile, for Mr. Rowe to locate someone to do the genetic testing. **Record at page 199, Affidavit of Nicholas L. Rowe at ¶ 99.** At this point, Mr. Rowe was not allowed the genetic test.

Bishop Bickley, Mr. Rowe’s Bishop, called LDS Family in Salt Lake City, Utah, the next day, on Tuesday morning, May 8, 2007. **Record at page 200, Affidavit of Nicholas L. Rowe at ¶ 104.** Mr. Rowe, his father, and mother went to Salt Lake City, Utah, on Friday, May 11, 2007, where they met with Fred Riley (“Mr. Riley”) Commissioner of LDS Family in Salt Lake City, Utah. It was agreed to let Mr. Rowe have genetic testing performed in May 2007. **Record at page 200, Affidavit of Nicholas L. Rowe at ¶ 106.** Mr. Rowe also offered to pay for expenses when he went to see Mr. Riley Commissioner of LDS Family in Salt Lake City, Utah. **Record at page 234, Ron Rowe’s Affidavit at ¶ 12; Record at page 200-201, Affidavit of Nicholas L. Rowe at ¶ 107.** As part of Mr. Riley’s condition to allow Mr. Rowe to have the genetic test, the results of that test must be released to LDS Family in Utah once the test was completed, Mr. Rowe agreed. **Record at page 201, Affidavit of Nicholas L. Rowe at ¶ 108.** Mr. Rowe called Mr. Riley requesting to see his baby daughter and meet the proposed adoptive parents. He was

told that if he signed some papers giving up my parental rights, then LDS Family in Salt Lake City, would surely give him a picture of his baby daughter. **Record at page 201, Affidavit of Nicholas L. Rowe at ¶ 110.** Further, if Mr. Rowe signed those documents terminating his parental rights, then maybe, just maybe, LDS Family in Salt Lake City, may let him meet his baby daughter and meet the proposed adoptive parents. **Record at page 201, Affidavit of Nicholas L. Rowe at ¶ 111.** In anticipation of the having the baby, Mr. Rowe and his family bought baby clothes, blankets, set up a crib at the house, and started discussing ways to successfully raise Mr. Rowe's baby girl as a Family. **Record at page 235, Ron Rowe's Affidavit at ¶ 22.**

From the outset, prior to the child's birth, LDS Family knew that Mr. Rowe was interested in pursuing a relationship with his baby daughter and protecting his parental rights. He was in its office in Salt Lake City, Utah, and they failed to provide him a copy of the necessary forms for him to protect his parental rights even though it had the information and/or documents in the office. Its agents specifically mislead Mr. Rowe into thinking that it was helping him protect his rights.

Through June 2007, LDS Family met with Mr. Rowe, sent him e-mails, made offers to him, and did everything in its power to make sure Mr. Rowe could not and did not comply with applicable Utah Statutes to assert his parental rights.

Mr. Rowe acted timely in pursuing his parental rights. Prior to the birth of his daughter, he was attending college at Idaho State University, located in Pocatello, Idaho. When he found out that Ms. Baird was pregnant and that he may be the father, he arranged to leave school and take a job making as much money as he could. The job entailed selling security systems in

Indiana. He made this choice in order to make more money in order to benefit his then unborn child. As a result, of his commitment to work in Indiana, he was not in the states of Idaho or Utah to determine the specific statutes he was required to comply with in order to protect his parental rights. Once he learned that he needed to proceed with litigation, he cooperated as quickly as he could while fulfilling his commitment for he employment.

The Utah legislature provided in section 78-30-4.15(3) that:

The Legislature finds no practical way to remove all risk of fraud or misrepresentation in adoption proceedings, and has provided a method for absolute protection of an unmarried biological father's rights by compliance with the provisions of this chapter. In balancing the rights and interests of the state, and of all parties affected by fraud, specifically the child, the adoptive parents, and the unmarried biological father, the Legislature has determined that the unmarried biological father is in the best position to prevent or ameliorate the effects of fraud and that, therefore, the burden of fraud shall be borne by him.

*Id.* Typically, if fraud was going to be introduced into the adoption process, one would expect that it would be perpetrated or furthered by the mother or those that supported her. In fact, that is what took place in this case. It can be demonstrated by the fact set forth in Mr. Rowe's initial brief that Ms. Baird, her family and those associated with her purposefully deceived Mr. Rowe about the date, time, and location of the child's birth. This deception was successful for more than two weeks despite Mr. Rowe's efforts to discover the truth. However in this case, all of the those Mr. Rowe relied upon for information concerning his parental rights also either provided false and/or omitted information to Mr. Rowe in order to keep him from discovering the true requirements of the Utah statutes. LDS Family knew the requirements for unwed father, but failed and/or refused to provide that information to Mr. Rowe in a timely manner. Mr. Rowe attempted to get help from LDS Services in Idaho and Utah. He met with several of the LDS

Family top officials that could and should have given him the information and/or the necessary paper work to protect his parental rights. LDS Family's action or inactions goes beyond passive non-disclosure. LDS Family affirmatively kept Mr. Rowe in the dark in order to get the adoption finalized. None of the case law cited by either party to this appeal closely resembles the fact encountered by the court in this case. Mr. Rowe met with ISH&W, LDS Family in Idaho, Logan, Utah, and Salt Lake City, Utah. He was in their offices seeking a way to protect his parental rights to his daughter. None of the other cases brought before this court have addressed such a fact pattern.

All LDS Family had to do, to have the adoption of Mr. Rowe's daughter complete, was to keep Mr. Rowe ignorant of his rights for 20 days after he discovered the birth of his child was in Utah, in order to defeat, forever, Mr. Rowe's rights to his daughter. That is precisely what LDS Family did in this case. LDS Family was still stringing Mr. Rowe along in June of 2007. It knew exactly what it was intentionally doing to Mr. Rowe's rights. When considering the circumstances as a whole in this case, Mr. Rowe, through no fault of his own, was unable to comply strictly with the Utah Statutes to protect his parental rights. Mr. Rowe should be granted the opportunity to pursue his parental rights under the facts of this case.

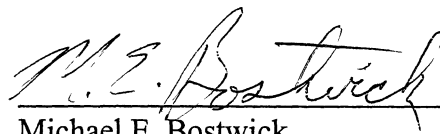
Despite all of Mr. Rowe's efforts, he was not able to comply with the Utah statutes governing the unwed father's registry within the time frame specified. Mr. Rowe did all he could to determine what was needed to protect his parental rights and then follow those directions. Unfortunately, LDS Family and Ms. Baird did all they could to distract Mr. Rowe from protecting his parental rights through registration.

### **CONCLUSION**

In view of the facts and arguments set forth above, and in consideration of the dismissal of the case issued by the district court upon its Memorandum Decision granting Respondents' Motion for Summary Judgement, Appellant Nicholas L. Rowe hereby request that this Court reverse the dismissal of the district court. Mr. Rowe requests that this matter be remanded to the district court with instructions for further proceedings, allowing the an evidentiary hearing on the Appellant's Petition and grant all other relief this Court deems just and appropriate.

Respectfully Submitted this 24<sup>th</sup> day of December 2008.

**M.E. BOSTWICK'S LAW OFFICES, P.C.**

  
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Michael E. Bostwick

Attorneys for Nicholas L. Rowe



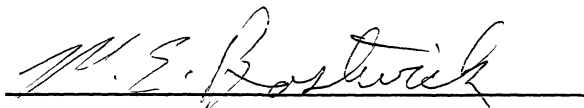
**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on the 24<sup>nd</sup> day of December 2008, I caused two (2) true and correct copy of the foregoing Brief of Appellant to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Utah Rules of Appellate Procedure and the Utah Rules of Civil Procedure, to the following persons:

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Hand delivered	_____
Overnight Mail	_____

*Attorney for Appellees*

  
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